

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**ERICSSON INC. AND
TELEFONAKTIEBOLAGET LM ERICSSON,
Plaintiffs,**

vs.

APPLE INC.,

Defendant.

Civil Action No. 2:21-cv-376

PUBLIC REDACTED

ERICSSON'S MOTION FOR LEAVE TO FILE ITS FIRST AMENDED COMPLAINT

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 15(a), Ericsson moves for leave to file its first amended complaint, attached to this motion as Exhibit A, to assert claims against Apple for breach of FRAND and breach of the duty to negotiate in good faith. There are several reasons why the Court should permit amendment.

First, this case is in its early stages, with no docket control order entered. Accordingly, the liberal amendment policies of Rule 15(a) govern Ericsson’s motion for leave, and Ericsson’s motion should be granted since there has been no undue delay, bad faith, or dilatory motive on Ericsson’s part. Ericsson could have amended its complaint in response to Apple’s motion to dismiss until January 10, 2022 as a matter of right.

Second, Apple cannot demonstrate a “substantial reason” why Ericsson’s motion should be denied. [REDACTED]

[REDACTED] Ericsson timely seeks to bring its claims that Apple has violated FRAND.

II. ARGUMENT

Because Ericsson’s motion does not require modification of a scheduling order, the liberal Rule 15 standard governs. *See Filgueira v. U.S. Bank Nat. Ass’n*, 734 F.3d 420, 422 (5th Cir. 2013). As the Fifth Circuit recently emphasized, “Rule 15(a)(2) requires courts ‘freely give leave [to amend] when justice so requires.’” *Carver v. Atwood*, 18 F.4th 494, 498 (5th Cir. 2021) (emphasis in original) (quoting FED. R. CIV. P. 15(a)(2)). The language of the rule “evinces a bias in favor of granting leave to amend.” *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002) (quotation omitted). Because the rule favors amendment, there must be a

“‘substantial reason’ to deny a request for leave to amend.” *Id.* No substantial reason exists to deny leave here.

Ericsson’s request to amend is timely. Ericsson filed its original complaint on October 4, 2021. Dkt. No. 1. Apple filed a motion to dismiss Ericsson’s original complaint on December 17, 2021. Dkt. No. 7. Though the filing of an amended complaint moots Apple’s motion to dismiss, *see Ultravision Techs., LLC v. Eaton Corp. PLC*, 2:19-CV-00290-JRG, 2019 WL 11250161, at *1 (E.D. Tex. Nov. 8, 2019), since Apple has not consented to the amendment, Ericsson filed its response in opposition concurrently with this motion for leave subject to the Court granting Ericsson’s motion for leave. [REDACTED]

[REDACTED] *Cf. Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 599 (5th Cir. 1981) (reversing denial of leave to amend and explaining that a 41-day delay in bringing amendment is reasonable).

Apple will not be prejudiced by Ericsson’s amendment. Ericsson’s original complaint asked the Court for a declaration that Ericsson complied with FRAND and the ETSI IPR Policy in its dealings with Apple regarding a license for cellular essential patents between the parties. Ericsson’s amended complaint seeks to add two causes of action against Apple: breach of FRAND, and breach of the duty to negotiate in good faith. Ericsson’s original complaint gave Apple adequate notice of the transactions at issue, the Court has not even entered a scheduling order yet, and because discovery has not yet begun, the new claims will not necessitate any “reiteration of discovery proceedings.” *Id.* Under a plain application of Rule 15(a)(2), Ericsson’s motion should be granted.

III. CONCLUSION

For the forgoing reasons, Ericsson asks that the Court grant its motion for leave to file its first amended complaint.

Dated: January 17, 2021

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on January 17, 2021.

/s/ Nicholas Mathews
Nicholas Mathews

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that pursuant to Local Rules CV-7(h) and (i), counsel for Plaintiffs reached out to counsel for Defendant Apple regarding the foregoing motion but was unable to schedule a conference prior to filing this motion.

/s/ Nicholas Mathews
Nicholas Mathews

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[REDACTED]
[REDACTED]
[REDACTED] _____